

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-731

November 30, 2004

Appeal of Consumer Assistance Division
Decision #2003-14789 Regarding Northern
Utilities Investigation Into Accuracy of Meter Test

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order we resolve a billing dispute between Northern Utilities Inc. (Northern or NU) and its former customer RMH, Inc. We find that RMH owes \$13,487.91 for the period of March 2001 through August 2001 and \$92,886.82 for the period September 2001 through June 2003, for a total of \$106,374.73.

II. BACKGROUND

This case came before us in October 2003 as an appeal by RMH of a decision of our Consumer Assistance Division (CAD). CAD found that RMH owed \$230,709 for usage recorded on properly operating meters for the period from September 21, 2001 through June 2003. RMH appealed that decision. The Commission decided to hear RMH's appeal on the single issue of whether NU properly tested the meter, thereby allowing the Commission to rely on the recorded meter usage. Both parties prefiled testimony, participated in hearings and filed briefs. On March 25, 2004, the Commission issued its decision finding it could not rely on the accuracy of the meter tests. Therefore, it directed Northern and RMH to exchange certain information and attempt to reach an agreement on how much gas was used during the time period September 21, 2001 through March 2003. The Commission directed the parties to report back by May 1, 2004. The parties requested a number of extensions which the Hearing Examiner granted.

On September 3, 2004, counsel for Northern notified the Commission that the parties had been unable to reach a settlement. She requested additional time be granted to permit the Staff to participate in the settlement process. On September 14, 2004, the Hearing Examiner issued a procedural order asking the parties to provide the calculations developed by Northern and statements of their current positions. Both parties made filings on September 28, 2004. On October 26, 2004, the parties discussed their current positions with the Advisory Staff and it was agreed that the Advisors would issue a Hearing Examiner's Report with a recommended resolution for consideration by the Commission.

III. ISSUE TO BE DECIDED

The Commission found that the meter readings for the period from September 21, 2001 through March 10, 2003 could not be relied upon and asked the parties to attempt to reach an estimate, using a variety of methods, as to how much gas RMH used during this period. This is the issue resolved in this Order. The Commission previously found that Northern had already agreed to charge RMH \$20,000 for the period from September 2001 through August 2001 and that RMH still owed \$13,487.91 from that period. *March 25 Order* at 2, fn. 2. As part of its appeal, the Commission did not reconsider CAD's decision concerning RMH's claims that Northern's actions caused RMH to be unable to contract with a gas marketer, thereby preventing it from obtaining lower prices than Northern's. CAD found that Northern had properly handled RMH's request to enroll with a marketer but that the marketer had not followed through and authorized the change. Therefore, the gas marketer issue is not before us.

IV. ESTIMATED USAGE AND BILLING

NU provided RMH with a number of different estimates based on RMH's oil consumption during 2003-2004 and based on gas volume usage from similarly-sized commercial buildings serviced by Northern. RMH has stated that it is willing to accept the method Northern used to estimate natural gas usage based on RMH's oil consumption. Under this method, Northern converted RMH's oil use to natural gas and then derived the use per heating degree day for the RMH facility and applied that to the period of use. Northern's calculation is attached as Attachment 1 to this Order.

According to RMH, two disputes remain concerning this calculation. RMH states that the period from March 2001 through August 2001 should be eliminated from consideration. We agree. As described above, CAD previously found that no dispute existed about this period. Northern agreed to accept \$20,000 in payment for this period and RMH continues to owe \$13,487.91 of this amount.

RMH also questioned the gas costs used by Northern in deriving the energy costs shown on Attachment 1. It attempted to compare the costs in Attachment 1 with those used by CAD in its original decision. In particular, RMH notes that the period from November 2002 through February 2003 is higher in Northern's calculations than CAD's. According to RMH, Northern's calculations reflect \$6,376.69 in higher costs.

The proper charges can be derived by using the tariffs in place during each of the months at issue. We have examined Northern's calculations attached to its September 28, 2004 filing and reflected in Attachment 1 and find them to be consistent with Northern's tariffs except for the period November 2002 through March 15, 2003. During this period, the cost of gas factor was \$0.8617. The Commission approved a mid-course correction for effect on March 15, 2003 which increased the CGF to \$0.9737. Therefore, Northern should have used \$0.8617 for the period November 2002 through March 15, 2003. Instead it used \$0.9737 for the entire period. Attachment 2 shows the

results of correcting this time period. This decreases the total amount owed by \$8,556.86.

III. CONCLUSION

RMH owes \$13,487.91 for the period of March 2001 through August 2001 and \$153,608.82 for the period September 2001 through April 2003. Undisputed in the CAD record is that RMH paid \$60,722 toward the amount owed for this period. This leaves a total balance owed of \$106,374.73. Northern may bill RMH for this amount and this docket will be closed.

Dated at Augusta, Maine, this 30th day of November, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.